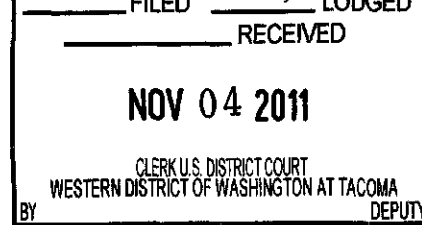




10-CV-05880-RESP

THE HONORABLE BENJAMIN H. SETTLE



**THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

DAVID S. WILLIAMS AND CHRISTINE
L. WILLIAMS

Plaintiff,

v.

WELLS FARGO BANK, N.A.; QUALITY
LOAN SERVICE CORPORATION OF
WASHINGTON; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEM, INC.,

Defendant,

Case No.: 3:10-cv-05880-BHS

PLAINTIFF'S RESPONSE
OPPOSING DEFENDANT'S
MOTION TO DISMISS

NOTED ON MOTION CALENDAR:
November 4, 2011

I. INTRODUCTION

Plaintiffs, David S. Williams and Christine L. Williams, proceeding without counsel, hereby serve their Response opposing the Defendant's Motions to Dismiss (*Dkt. #52, #53, #54*) and as grounds states:

STATEMENT OF THE CASE

The instant matter in this amended case is primarily a lawsuit against the Defendants for violations of the Fair Debt Collection Practices Act and supplementary for material violations of the Washington Deed of Trust Act (DTA) however, the two issues are nearly identical.

PLAINTIFF'S RESPONSES

Plaintiff stated in the Complaint that Plaintiff is the owner of record of the subject

PLAINTIFF'S RESPONSE OPPOSING
DEFENDANT'S MOTION TO DISMISS

David and Christine Williams, Plaintiff
15208 Daffodil Street Court East
Sumner, WA 98390
253-906-5001

1 property, however subsequent investigation and discovery since the Plaintiffs filed the
2 Complaint has uncovered an unforeseen defect in Plaintiff's own claim. Plaintiffs discovered
3 that Plaintiff's Acknowledgement of the Statutory Warranty Deed was never recorded.

4
5 The effect of the said defect is that the Plaintiffs lacked capacity to encumber the
6 subject property at the time the Deed of Trust was executed and recorded. This means the
7 Deed of Trust is invalid. Additionally, the Plaintiffs were enticed to make payments towards
8 'nothing' and they never would have obtained the lawful title to the subject real estate they
9 thought they had purchased. They also paid closing cost to acquire real estate that they never
10 acquired. They paid insurance and taxes on real estate that they did not lawfully own.

11
12 Thus the Defendant's claims on the subject real estate and right to foreclose pursuant
13 to RCW 61.24 *et. seq.* are incurably defective by operation of law because the Deed of Trust
14 is invalid. This fact also impeaches the entire Declaration of Todd Ziegenbein (*Dkt. #53*),
15 Assignment of Deed of Trust, Appointment of Successor Trustee, Notice of Default and
16 Notice of Trustee's Sale and all publications. These newly discovered facts preclude the
17 Defendants from conducting a foreclosure sale on the basis of RCW 61.24 *et. seq.* based on
18 the invalid Deed of Trust and also unequivocally subject the Defendants to the FDCPA.

19
20 It is unclear 'why' recordation of the Acknowledgment was omitted. It may be an
21 intentional act of fraud (RICO) because it seems unlikely the escrow company which closed
22 the transaction, the title insurance company, the mortgage company, their successors, the
23 county assessor, treasurer and auditor would all innocently overlook such a major defect.

24
25 Plaintiffs lacked sophistication and expertise to spot the defect and relied upon the
26 expertise of others such as the escrow company, lender and county officials to properly close

PLAINTIFF'S RESPONSE OPPOSING
DEFENDANT'S MOTION TO DISMISS

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1 964 F.Supp. 213. The Plaintiffs have steadfastly disputed the debt and requested
 2 validation. "This subchapter is designed to protect consumers who have been
 3 victimized by unscrupulous debt collectors, regardless of whether a valid debt actually
 4 exists. Baker v. G.C. Services Corp., C.A.9 (Or.) 1982, 677 F.2d 775.
 5

6 "A federal court may exercise jurisdiction over a litigant only when that litigant
 7 meets constitutional and prudential standing requirements." Elk Grove Unified Sch. Dist.
 8 v. Newdow, 542 U.S. 1, 11 (2004). The Defendants have not met the standing
 9 requirements required to obtain their motion.

10 CONCLUSION

11 Haines v. Kerner et. al. 404 U.S. 519 states a Pro Se litigant's complaint cannot be
 12 dismissed for failure to state a claim upon which relief can be granted; Conley v. Gibson,
 13 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944) "...we
 14 conclude that he is entitled to an opportunity to offer proof. The judgment is reversed
 15 and the case is remanded for further proceedings consistent herewith." Plaintiffs request
 16 that the Court deny the Defendant's motions to dismiss.
 17

18 Respectfully Submitted November ____, 2011

19 PLAINTIFF: DAVID S. WILLIAMS

20 BY: David Stanley Williams AR

21 PLAINTIFF: CHRISTINE L. WILLIAMS

22 BY: Christine L. Williams AR

23
 24
 25
 26
 PLAINTIFF'S RESPONSE OPPOSING
 DEFENDANT'S MOTION TO DISMISS

David and Christine Williams, Plaintiff
 15208 Daffodil Street Court East
 Sumner, WA 98390
 253-906-5001

CONFORMED COPY

201110260618 CCOMITA 7 PGS
 10/26/2011 02:58:33 PM \$68.00
 AUDITOR, Pierce County, WASHINGTON

Name & Return Address:

DAVID S. WILLIAMS and CHRISTINE L. WILLIAMS

15208 Daffodil Street Court East

Sumner, WA 98390

Please print legibly or type information.

Document Title(s) **CERTIFICATE OF ACKNOWLEDGEMENT**Grantor(s) **Evergreen State Builders, LLC**

____ Additional Names on Page ____ of Document

Grantee(s) **Christine L. Williams and David S. Williams**

____ Additional Names on Page ____ of Document

Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section)

Section 19 Township 20 Range 05 Quarter 23 Lot 3, of MOUNTAIN VIEW plat no. 200402055004

Complete Legal Description on Page 45 of Document

Auditor's Reference Number(s)

200409230497

Assessor's Property Tax Parcel/Account Number(s)

700170-003-0

The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party (Required for non-standard recordings only)

Gpcovst.doc rev 4/02

After Recording Return to:
DAVID S. WILLIAMS and CHRISTINE L. WILLIAMS
15208 Daffodil Street Court East
Sumner, WA 98390

CERTIFICATE OF ACKNOWLEDGEMENT

We, David S. Williams and Christine L. Williams the living man and living woman, in the capacity of DAVID S. WILLIAMS and/or David S. Williams and CHRISTINE L. WILLIAMS and/or Christine L. Williams, are recorded as the grantee(s) on the warranty (grant) deed for the real estate described on the attached certified copy of said deed. It is our freewill act and deed, to acknowledge our acceptance of the deed and lawful ownership of the property under the terms of the deed. We ask that the record on file in the office of the register of deeds be updated to show our acceptance of the deed, and as the lawful owners of the real estate.

Done under my hand and seal of my free will act and deed,

David S. Williams AR
David S. Williams
Christine L. Williams AR
Christine L. Williams

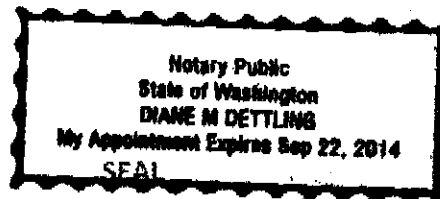
JURAT

I, Diane M. Dettling a Notary Public certify that I know or have satisfactory evidence that David S. Williams and Christine L. Williams appeared before me, and executed this CERTIFICATE OF ACKNOWLEDGEMENT as their sworn statement as a free and voluntary act of their own will under penalty of perjury. I certify under PENALTY OF PERJURY under the laws of the State of Washington, County of Pierce that the foregoing paragraph is true and correct.

DATED: 10.26.11

Notary Public Diane M. Dettling

My appointment expires 9.22.2014



①

PST-153771

200409230407 4 PGS
09-23-2004 12:46pm \$22.00
PIERCE COUNTY, WASHINGTON

WHEN RECORDED RETURN TO:

Name: Christine L. Williams
Address: 16206 Daffodil Street East
Sumner, WA 98390

Esrow Number: 153771DM

Filed for Record at Request of: Puget Sound Title Company

STATUTORY WARRANTY DEED

The Grantors, Evergreen State Builders, LLC, a Washington Limited Liability Company for and in consideration of Ten Dollars and other good and valuable consideration in hand paid, conveys, and warrants to Christine L. Williams and David S. Williams, wife and husband the following described real estate, situated in the County of Pierce, State of Washington:

Lot 3, of MOUNTAIN VIEW, according to plat recorded February 5, 2004 under Recording No. 200402060004, records of Pierce County Auditor.

Situate in the City of Sumner, County of Pierce, State of Washington.

SUBJECT TO: See attached EXHIBIT "A"

Assessor's Property Tax Parcel/Account Number: 700170-003-0

Dated: September 17, 2004

Evergreen State Builders, LLC

BY: 
Daniel Kelley
Manager

BY: _____

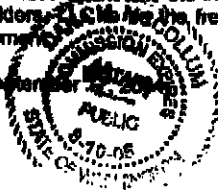
STATE OF Washington

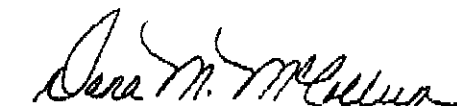
COUNTY OF Pierce

} ss.

I certify that I know or have satisfactory evidence that Daniel Kelley is the who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Manager of Evergreen State Builders, LLC as the free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: September 17, 2004





Name: Dana M. McCollum
Notary Public in and for the State of Washington
My appointment expires: August 10, 2005

4056496 1 P6
09-23-2004 12:11pm ESRWRY
ENCLOSURE COLLECTED \$22.00
PIERCE COUNTY, WASHINGTON
APP. FEE: \$0.00

22-

Order Number: 153771DM

EXHIBIT A

Easement, including the terms, covenants and provisions as may be contained therein, granted/reserved by instrument

Recording No.: 1078879

Records of Pierce County, Washington

In favor of: PUGET SOUND POWER AND LIGHT COMPANY, a
Washington Corporation

For: An electric transmission and/or distribution system together
with appurtenances

Said easement contains, among other things, the following:

Covenants against interference and blasting.

Rights of access of purposes of maintenance and repair.

Right to cut all brush and timber and trim all trees standing or growing which constitute a menace or danger to said system, as provided for in said easement.

Easement, including the terms, covenants and provisions as may be contained therein, granted/reserved by instrument

Recording No.: 2000062

Records of Pierce County, Washington

In favor of: PUGET SOUND POWER AND LIGHT COMPANY, a
Washington Corporation

For: An electric transmission and/or distribution system together
with appurtenances

Said easement contains, among other things, the following:

Covenants against interference and blasting.

Rights of access of purposes of maintenance and repair.

Right to cut all brush and timber and trim all trees standing or growing which constitute a menace or danger to said system, as provided for in said easement.

Covenants, Conditions, Restrictions, Easements and liability, if any, for Assessments, Liens or Charges, but omitting any covenant or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as contained on PIERCE COUNTY SHORT PLAT NO. 78-700, 78-587 AND 79-80.

Easement dedicated in said Plat;

For: Ingress, egress and utilities

NOTE: In connection with the easement delineated on Pierce County Short Plat no. 78-700 the company notes Vacation of Easement Agreement recorded June 26, 2000 and July 12, 2000 under Recording No. 200006200040 and 200007120449. Said vacations do not contain the approval of the City of Sumner.

Easement, including the terms, covenants and provisions as may be contained therein, granted/reserved by instrument

Recording No.: 2800275 and 2000343

Records of Pierce County, Washington

In favor of: TRIBUNE PUBLISHING COMPANY DBA CABLE TV PUGET
SOUND

For: A community antenna television system, and incidental

purposes

Agreement and the terms and conditions thereof:

Recorded: June 12, 1986
Recording No.: 2987828
Purpose: Not to oppose the formation of or the preliminary or final assessment roll any LID of the City of Sumner for concrete, curbs, gutters, sidewalks and widening parker road and the relocation of a carport

Easement, including the terms, covenants and provisions as may be contained therein, granted/reserved by instrument

Recording No.: 700384
Records of Pierce County, Washington
In favor of: MOUNTAIN VIEW TELEPHONE COMPANY
For: Pole line, and incidental purposes
Affects: The legal description contained in said easement is not sufficient to determine its exact location within said premises

Easement, including the terms, covenants and provisions as may be contained therein, granted/reserved by instrument

Recording No.: 208888
Records of Pierce County, Washington
In favor of: PUGET SOUND POWER AND LIGHT COMPANY, a Corporation
For: Electric transmission and/or distribution lines, and incidental purposes

Rights of Drainage District No. 11 as to a portion of said premises on the West, appropriated by Decree entered in Pierce County Superior Court Cause No. 34858. No assurances are made concerning the exact interest or title which as appropriated in said action.

Easement, including the terms, covenants and provisions as may be contained therein, granted/reserved by instrument

Recorded: August 8, 1983
Recording No.: 830888148
Records of Pierce County, Washington
In favor of: CITY OF SUMNER
For: A permanent easement and right of way, together with a temporary construction easement, and right of way, and incidental purposes

Agreement and the terms and conditions thereof:

Between: CITY OF SUMNER and GORDON J. ANDERSON and LAVERN ANDERSON, husband and wife
Recorded: October 18, 1985
Recording No.: 8510180180
Purpose: They will sign any petition in favor of the formation of an L. I. D. for the construction of sidewalks, curbs, gutters, street improvements and storm drainage

Easement, including the terms, covenants and provisions as may be contained therein, granted/reserved by instrument

Recorded: February 11, 1986
Recording No.: 8602110812
Records of Pierce County, Washington
In favor of: PUGET SOUND ENERGY, INC., a Washington Corporation
For: An electric transmission and/or distribution system together with appurtenances

Said easement contains, among other things, the following:

Covenants against interference and blasting.

Rights of access of purposes of maintenance and repair.

Right to cut all brush and timber and trim all trees standing or growing which constitute a menace or danger to said system, as provided for in said easement.

Easement, including the terms, covenants and provisions as may be contained therein, granted/reserved by instrument

Recorded: June 28, 2000

Recording No.: 20000820001

Records of Pierce County, Washington

In favor of: MOUNTAIN VIEW L. L. C., their successors and assigns

For: The right, privilege and authority to construct, improve, repair and maintain utilities

Agreement and the terms and conditions thereof:

Between: HEALY FAMILY TRUST, LLC and CITY OF SUMNER, a Municipal Corporation

Dated: November 6, 2002

Recorded: December 12, 2002

Recording No.: 20021212106

Purpose: Maintain storm water facilities and to implement a pollution source control plan

Covenants, Conditions, Restrictions, Easements and liability, if any, for Assessments, Liens or Charges, but omitting any covenant or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as contained on CITY OF SUMNER LOT LINE ADJUSTMENTS recorded November 19, 2001 and May 15, 2003 under Recording No. 200111195001 and 200305155006.

Covenants, Conditions, Restrictions, Easements and liability, if any, for Assessments, Liens or Charges, but omitting any covenant or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as contained on the Plat of MOUNTAIN VIEW.

Easement delineated on the face of said Plat:

For: 10 foot utility

Affects: The North 10 feet of said premises

For: 10 foot storm

Affects: The South 10 feet of said premises

Covenants, Conditions, Restrictions, Easements and liability, if any, for Assessments, Liens or Charges, but omitting any covenant or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as contained in declaration of restrictions.

Recorded: June 11, 2004, under

Recording No. 200408110122

Executed by: EVERGREEN STATE BUILDERS

DSW



STATE OF WASHINGTON, County of Pierce
ss: I, Julie Anderson, of the above
entitled county, do hereby certify that this
 foregoing instrument is a true and correct copy
 of the original now on file in my office.
 IN WITNESS WHEREOF, I hereunto set my
 hand and the Seal of said County.

By: Julie Anderson Deputy

Date: 10/26/11

STATE OF WASHINGTON

RECEIVED
PIERCE CO. AUDITOR

DEC 30 2010

COUNTY OF PIERCE

Oath of Office

I, Julie Anderson, do solemnly swear that I am a Citizen of the United States and a resident and registered voter of Pierce County; that I will support the Constitutions of the United States and the State of Washington, and the Charter and Ordinances of Pierce County; and will faithfully, impartially, and honestly perform the duties of the office of Pierce County Auditor as such duties are prescribed by law, so help me God.



Julie Anderson

Subscribed and sworn to before me this 30th day of December, 2010.



Lori Augino
Chief Deputy Auditor